

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

CORNELL W. BARBER,	)	
	)	
Petitioner,	)	
v.	)	Civil Action
	)	No. 05-3127-CV-S-RED-H
JOSEPH E. GUNJA, et al.,	)	
	)	
Respondents.	)	

**ORDER AND JUDGMENT**

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed written exceptions to the report and recommendation of the Magistrate in which he continues to allege that his underlying sentence is illegal. He further claims that the Bureau of Prisons' calculation of the length of his sentence and his release date is factually, legally, and constitutionally incorrect.

Having fully reviewed the record de novo, this Court agrees with the Magistrate that the petition should be dismissed. Initially, as the Magistrate correctly noted, to the extent that petitioner is challenging the legality of his federal sentence, the petition is improperly filed under 28 U.S.C. § 2241. Additionally, regarding petitioner's claim that his sentence has been unconstitutionally and

illegally calculated, it is clear that the Magistrate fully reviewed petitioner's contentions on the merits, and found that there is no basis for his allegations. Rather, the record indicates that the computation of petitioner's sentence and release date are correct. Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr

RICHARD E. DORR  
United States District Judge

Date: November 16, 2006